will be solvable in treasury notes. And it is also held that the legal tender acts are constitutional as applied to transactions since their passage.

9. In *Trebilcock* v. *Wilson*, it is decided that a debt created before the passage of the legal tender acts, and solvable by express terms "in specie," cannot be discharged by the tender of the nominal amount due in treasury notes.

ISAAC S. SHARP,
Philadelphia.

RECENT AMERICAN DECISIONS.

Supreme Court of Illinois.

WALSH v. THE PEOPLE OF ILLINOIS.

A proposal by an officer to receive a bribe, though not bribery, is an indictable misdemeanor at common law.

THE defendant below was an alderman of the Common Council of the city of Chicago. As such he was indicted for a proposal made by himself to receive a bribe, to influence his action in the discharge of his duties.

The opinion of the Court was delivered by

THORNTON, J.—The indictment is in form an indictment at common law; and it is conceded that the statute has not created such an offence against an alderman. Our criminal code has made it an offence to propose or agree to receive a bribe on the part of certain officers, but an alderman is not, either in terms or by construction, included amongst them: Rev. 1845, p. 167, sec. 87. It is contended that the act charged does not fall within any of the common law definitions of bribery; that no precedent can be found for such an offence; and that as propositions to receive bribes have probably often been made, and as no case can be found in which they were regarded as criminal, the conclusion must follow that the offence charged is no offence. The weakness of the conclusion is in the assumption of a premise which may or may not be true. This particular phase of depravity may never before have been exhibited; and if it had been, a change might be so suddenly made by an acceptance of the offer, and a concurrence of the parties, as to constitute the offence of bribery, which consists in the

receiving any undue reward to incline the party to act contrary to the known rules of honesty and integrity.

But the character of a particular offence cannot fairly be determined from the fact that an offence exactly analogous has not been described in the books. We must test the criminality of the act by known principles of law.

At common law, bribery is a grave and serious offence against public justice, and the attempt or offer to bribe is likewise criminal.

A promise of money to a corporator to vote for a mayor of a corporation was punishable at common law: *Rex* v. *Plympton*, 2 Lord Raym. 1377.

The attempt to bribe a privy counsellor to procure an office was an offence at common law: *Rex* v. *Vaughan*, 4 Burr. 2494. In that case Lord MANSFIELD said: "Whenever it is a crime to *take*, it is a crime to *give*. They are reciprocal. And in many cases, especially in bribery at elections to Parliament, the attempt is a crime. It is complete on *his* side who offers it." Why is the mere unsuccessful attempt to bribe criminal? The officer refuses to take the offered reward, and his integrity is untouched, his conduct uninfluenced by it. The reason for the law is plain: the offer is a sore temptation to the weak or the depraved. It tends to corrupt, and as the law abhors the least tendency to corruption, it punishes the act which is calculated to debase, and which may affect prejudicially the morals of the community. The attempt to bribe is then at common law a misdemeanor, and the person making the offer is liable to indictment and punishment. What are misdemeanors at common law? Wharton, in his work on Criminal Law, p, 74, says: "Misdemeanors comprise all offences lower than felonies which may be the subject of indictment. They are divided into two classes: first, such as are *mala in se*, or penal at common law; and secondly, such as are *mala prohibita*, or penal by statute. Whatever under the first class mischievously affects the person or property of another, or openly outrages decency, or disturbs public order, or is injurious to public morals, or is a breach of official duty when done corruptly, is the subject of indictment."

In the case of the *King* v. *Higgins*, 2 East 5, the defendant was indicted for soliciting and inciting a servant to steal his master's chattels. There was no proof of any overt act towards carrying the intent into execution, and it was urged in behalf of the prisoner that the solicitation was a mere fruitless, ineffectual tempta-

tion—a mere wish or desire. It was held by all the judges that the soliciting was a misdemeanor, though the indictment contained no charge that the servant stole the goods, nor that any other act was done except the soliciting. Separate opinions were delivered by all the judges. Lord KENYON said: "The solicitation was an act, and it would be a slander upon the law to suppose that such an offence was not indictable." GROSE, J., said: "An attempt to commit a misdemeanor was in itself a misdemeanor. The gist of the offence is the indictment." LAWRENCE, J., said: "All offences of a public nature, that is, all such acts or attempts as tend to the prejudice of the community, are indictable, and that the mere soliciting the servant to steal was an attempt or endeavor to commit a crime." LE BLANC, J., said: "That the inciting of another, by whatever means it is attempted, is an act done; and if the act is done with a criminal intent, it is punishable by indictment." An attempt to commit an offence, or to solicit its commission, is at common law punishable by indictment: 1 Haw. P. C. 55; Whart. Cr. Law 78 and 872; 1 Russ. on Cr. 49. While we are not disposed to concur with Wharton to the full extent in the language quoted, that every act which might be supposed, according to the stern ethics of some persons, to be injurious to the public morals, to be a misdemeanor, yet we are of opinion that it is a misdemeanor to propose to receive a bribe. It must be regarded as an inciting to offer one, and a solicitation to commit an offence. This, at common law, is a misdemeanor. Inciting another to the commission of any indictable offence, though without success, is a misdemeanor: 3 Chitty Cr. Law 994; 1 Russ on Cr. 49; *Cartwright's Case*, Russ. & R. C. C. 107, note *b*; *Rex* v. *Higgins*, 2 East 5.

As we have seen, the mere offer to bribe, though it may be rejected, is an offence, and the party who makes the offer is amenable to indictment and punishment. The offer amounts to no more than a proposal to give a bribe; it is but a solicitation of a person to take one. The distinction between an offer to bribe and a proposal to receive one, is exceedingly nice. The difference is wholly ideal. If one man attempt to bribe an officer, and influence him to his own degradation and to the detriment of the public, and fail in his purpose, is he more guilty than the officer who is willing to make sale of his integrity, debase himself, and who solicits to be purchased, to induce a discharge of his duties? The prejudi-

cial effects upon society are, at least, as great in the one case as in the other; the tendency to corruption is as potent, and when the officer makes the proposal he is not only degraded, but the public service suffers thereby. According to the well established principles of the common law, the proposal to receive the bribe was an act which tended to the prejudice of the community, greatly outraged public decency, was in the highest degree injurious to the public morals, was a gross breach of official duty, and must therefore be regarded as a misdemeanor for which the party is liable to indictment.

It is an offence more serious and corrupting in its tendencies than an ineffectual attempt to bribe. In the one case the officer spurns the temptation and maintains his purity and integrity; in the other, he manifests a depravity and dishonesty existing in himself, which, when developed by the proposal to take a bribe, if done with a corrupt intent, should be punished, and it would be a slander upon the law to suppose that such conduct cannot be checked by appropriate punishment.

In holding that the act charged is indictable, we are not drifting into judicial legislation, but are merely applying old and well-settled principles to a new state of facts.

We are compelled, however, to reverse upon the evidence, and shall not, therefore, further allude to the law of the case or to the errors assigned upon instructions given and refused.

The defendant was found guilty upon the unsupported testimony of one Goggin, and it appears that there were two persons of the name of Walsh, referred to by Goggin in his numerous conversations—one was a member of the Board of Education, and the other, the present defendant, was a member of the Common Council of Chicago. After the date, as fixed by Goggin, of the proposal on the part of the defendant to receive a bribe, Goggin said to one Young, that he had agreed to give two thousand dollars to Walsh, but that he now demanded four thousand dollars. Young replied, there are two persons of that name, "which one is it?" Goggin said, "It is Walsh of the board of education; the alderman is a gentleman." Goggin complained to one Miller that the defendant had prevented him from selling his lot to the city, and said, "I will get a chance at him some of these days." He also said to Donavan, "Walsh is my bitterest enemy, and I will do everything in my power to send him up." To Cullerton, "I

have nothing against any alderman but Jim Walsh, and by ——, I will fix him if swearing will do it." To Gustave Busse, "All I want is Walsh, the d——d scoundrel, I want to go for him. If I can bring him to the penitentiary, I am going to do it." To Fred. Busse, "There is only one man I want to go for—Walsh. If I get on the stand if I don't fix him and get him in the penitentiary." Upon cross-examination, Goggin denied all hostility, and any expressions of hostility towards the defendant, and he also denied the conversation testified to by Young. We might make further reference to the evidence, but enough has been cited to show a deep feeling of hostility on the part of the witness, towards the defendant, and a determination to have him convicted if false swearing could do it. We must credit the numerous witnesses who contradict the prosecutor. He is therefore impeached, and to a great extent rendered unworthy of belief. He cannot have sworn to the truth, if we believe the impeaching witnesses, or if upon the trial he testified truly then he made wilfully false statements to divers persons before the trial.

Not only is there reasonable doubt created as to the guilt of of the accused, but the mind is forced to the conclusion that the prosecution was the result of personal animosity, and was carried on for the gratification of malicious feeling. There is no safety to the good, or virtuous or innocent, if convictions can be had upon the testimony presented in this record.

In a case involved in so much doubt the good character of the accused, abundantly proved, was entitled to great weight. A large number of witnesses testified that his general reputation for honesty and integrity was good. Under all the circumstances it is almost incredible that a verdict of guilty was obtained.

BREESE, J.—I concur in reversing the judgment, but I do not concur in all the views presented in this opinion.

SCOTT, J.—I concur in reversing the judgment in this case, but dissent from the views expressed in the opinion of the majority of the court.

There is no statute in this state which defines the offence for which the plaintiff in error was indicted and convicted. It is a common-law indictment, and it was sought to charge him with having in his official capacity offered to receive a bribe. The in-

dictment alleges that the plaintiff in error, "on the 1st day of December 1871, then a member of the common council of the city of Chicago, to wit, an alderman, did then and there unlawfully, wickedly, corruptly, and contrary to his duty as such alderman, propose to receive as a bribe of and from William Goggin, a large sum of money, to wit, the sum of $4000, to induce him, the said Walsh, as such alderman, to use his influence with favor as such alderman, to induce and secure the purchase by said common council, of said William Goggin, for said city of Chicago, for the place whereon to erect a public school-house," certain real estate, it being the duty of said common council to purchase real estate for said city whereon to erect school-houses, contrary to law, &c. The only question of any importance presented by the record is, whether there is any such offence known to and indictable at common law as an *offer* by any officer to receive a bribe for his influence in his official capacity to induce his favorable action for corrupt and improper purposes.

Bribery at common law is defined to be "the receiving or offering any undue reward by or to any person whatever, whose ordinary profession or business relates to the administration of public justice, in order to influence his behavior in office, and incline him to act contrary to the known rules of honesty and integrity." But in a more extended and enlarged sense it may be committed by any person in an official situation, who shall corruptly use the power and interest of his place for rewards or promises, and by any person who shall give or offer or take a reward for offices of a public nature: 3 Greenlf., sec. 71; 1 Russell on Crimes 154; 4 Bl. Com. 139. In England the offence of taking bribes was punished in inferior officers with fine and imprisonment; and in those who offer a bribe, though not taken, the same: 4 Bl. 140. It is said the law abhors the least tendency to corruption, and upon the principle that an attempt to commit a misdemeanor is itself a misdemeanor, attempts to bribe public officers, though unsuccessful, have been held to be criminal. The object was to preserve purity in official conduct, and in the administration of justice; and the tendency of the bribe being to corrupt official conduct and pervert justice, he who received and he who offered the bribe were alike punished. In no definition of bribery that I have seen does it include a mere offer on the part of an officer to be himself bribed. No reference has been made to any elementary work, or to any

adjudged case that gives such a definition, and I am persuaded that no such authority can be found. Bribery is punished on the ground that it tends to produce official misconduct, or to corrupt the administration of justice. It is difficult to comprehend how a mere offer on the part of an officer to receive a bribe could come within the reason of the rule. A party who would express a willingness to receive a bribe for his official influence is necessarily corrupt, but no extrinsic motive is brought to bear on him by a mere offer on his part, not accepted, other than his own evil inclinations which previously existed, and hence an offer to receive a bribe does not come within any definition of bribery.

There is no such offence defined by our statutes or the common law as an offer on the part of an alderman to receive a bribe as alleged, and the motion to quash the indictment ought to have been allowed, and because it was not sustained I am of opinion that the judgment ought to be reversed. I am unable to comprehend how a party may be indicted for an alleged crime wholly unknown to the law, and on the trial be convicted of immoral conduct, even if it be admitted that such conduct tends to produce official misconduct, and punished as bribery was punished at common law. It would certainly constitute an anomalous proceeding in criminal jurisprudence. Nearly if not all of the misdemeanors defined by common law writers, which it has been thought necessary to punish, have been defined in our criminal code, and provision made for the summary punishment before justices of the peace and by indictment, and in my judgment it is against the policy of our laws to permit indictments for such offences not defined by statute.

Judgment reversed.

The foregoing case is one of such novelty as fairly to justify its republication from the *Chicago Legal News*. The discussion of the question by Judge THORNTON, and the dissenting opinion of Judge SCOTT, have brought out the law, pretty fully. There can be no question, that where the commission of an act is a penal offence, the attempt to commit it, when evidenced by any overt act, will also be an offence: LEE, J., in *Rex* v. *Sutton*, 2 Strange 1074. There must, of course, be some overt act done towards the commission of the offence; mere intention is not sufficient. Hence it was held at first, where no statute existed, that having counterfeit coin in possession, with intent to utter it as good, is not indictable: *Rex* v. *Stewart*, 1 Russ. & Ry. 288. But in a later case, *Rex* v. *Fuller*, Id. 308, it was held, that, procuring counterfeit coin with intent to utter, was an offence, and that having such coin in possession, unaccounted for, and without any circumstance to induce a belief that the prisoner was the maker,

which would constitute a distinct offence, was presumptive evidence of procuring with intent to utter.

But where offences are defined by statute, as in most of the American states, it raises a strong presumption against treating acts as criminal, which are not so defined in the criminal code of the state. And this is more especially so, where such code assumes to define certain offences of the same character, omitting that in question. But notwithstanding all this, if the common law of England has been adopted by such state, either expressly or by long acquiescence, it is not without precedent, to maintain indictments for offences as misdemeanors at common law. But in such cases there should be great watchfulness not to extend so convenient a net, beyond what is clearly defined in the common law precedents. There is nothing more clearly of the essence of despotism, than to hold crimes dependent upon the will of the government, and the construction of the courts. Where there is no landmark or precedent to limit and define such construction, it is scarcely more security to the citizen or subject, than the arbitrary will of the magistrate, and this is not essentially any surer safeguard for the liberty of the subject, than the will of the executive, which is but a euphemism for despotism. We are far from saying that there is anything of this character deducible from the decision in this case. It seems to be, upon the whole, very emphatically in favor both of liberty and good morals. But it comes very much into the debatable ground of constructive offences, and there is great demand for caution, wherever such questions are involved in the administration of criminal justice. It would surely, in the present case, where the legislature have defined the bribing, or attempting to bribe, certain specified officers of the state, as punishable crimes, omitting the office in question, not be an extravagant demand of the courts, in favor of that certainty required in all criminal prosecutions and convictions, that they should hold, that those cases were omitted purposely by the legislature. But we can well conceive, that the disgusting nature of the offence charged, that a public officer should solicit his own purchase; and especially the sensitiveness of the public conscience upon that particular point just at present, might plead very loudly in favor of holding the alleged offender for the commission of a crime, if proved guilty, which from the nature of the evidence seems not very certain to occur. The fact, too, that the moral guilt is much the same here, as in the cases defined in the statute, will guaranty the accused against suffering more than his moral delinquency deserves.

But notwithstanding all these arguments, and many others, in favor of the doctrine of the court in the principal case, we must say, that it bears, in our judgment, more the appearance of the expression of righteous indignation against a vile moral delinquency, than that of a cautious conviction of a clearly-defined crime.

Misdemeanors, at common law, have long been known (1) as offences against public justice, as by hiring or intimidating witnesses to disobey the process of the court: *Bushell* v. *Barrett*, 21 Eng. Com. Law 483; *State* v. *Keyes*, 8 Vt. 57; (2) as offences against the public health, as by selling unwholesome provisions: *Rex* v. *Dixon*, 3 M. & S. 11; s. c. 4 Campb. 12; (3) offences against public decency: 12 Petdff. Ab. 638. This offence of bribery, or attempt at bribery, of public officers, may come partly under both the first and last heads, either as an offence against public justice or public decency, although the latter term has more specific reference to shocking grossness, probably. In short, to use the language of the text writers: "It seems to be an established rule, that

whatever openly outrages decency, and is injurious to public morals, is a misdemeanor at common law:" 12 Ptdff. Ab. 628; 4 Bl. Com. 65 n.; 1 Haw. P. C., ch. 5, § 4.

No doubt, these terms and many similar ones may be found in the reported cases, sufficiently embracing, in a general way, the offence charged against the respondent. But the rule of law, as we understand it, will not justify convicting one of an offence, which in the opinion of the court comes within these general terms. Such a rule of creating criminal offences in the hands of a corrupt judge, or an unwise and inexperienced one, might be made to cover almost any act of one's life. The rule, of late certainly, has been not to extend the rule of constructive misdemeanors at common law, beyond what the precedents already indicated. It is admitted, there is no precedent for the present case. It is not like *Rex* v. *Vaughan*, 4 Burr. 2494: an attempt to bribe a privy counsellor to give one an office; nor is it like the case of an endeavor to bribe a judge: 2 East 14, 17, 22; or like *Young's Case:* an attempt to influence a juryman in his verdict, cited 2 East 14, 16; or like *Plympton's Case*, 2 Ld. Ray. 1377: an attempt to bribe a mayor in his vote at the election of corporate officers.

It may be said, indeed, that the offence is very similar. And it may be, in regard to its moral turpitude, even more base than any of those defined in the books. But it clearly is not the same, and we may be content to wait till the legislature see fit to make a precedent of it, since the law has confessedly not yet done it. In criminal matters, especially, it is well for the courts to wait upon the legislature, and the existing rules of law, rather than seem to go beyond them, even for the accomplishment of some great good, in time of a perilous crisis in the public sentiment. These things will soon pass away, and other times, and other men, probably, supervene. How much better or wiser, it is not needful to conjecture. We may at least say, sufficient unto the day are the ills we have. We need not, therefore, loosen our present moorings, and fly to those we know not of, as may truly be said of all departures, in the administration of criminal jurisprudence, from established precedent. The evil of admitting constructive offences will become appalling, we fear, when it is too late to retreat. The offence charged in this case seems to demand, for its redress, rather the impeachment and removal from office of the offender, than his punishment without removal, and that is the mode in which the law has hitherto dealt with such offences, and it seems every way the fittest and best.

I. F. R.

Supreme Court of Missouri.

WASHINGTON SAVINGS BANK *v.* EKEY ET AL.

The alteration of a negotiable promissory note after its execution, by filling blanks in a printed form, so as to make the note draw interest at a given rate from date, avoids the note in the hands of an innocent holder for value who has received the same in the usual course of trade, and before maturity.

THE condition of the note, the nature of the alteration, and all the facts necessary to a correct understanding of the point actually decided, appear in the opinion of the court, which was delivered by